



## INTERIOR BOARD OF INDIAN APPEALS

Estate of Winnie Moves Camp

7 IBIA 266 (11/15/1979)

Judicial review of this case:

Summary judgment for defendant, *Moves Camp v. Andrus*, No. 80-5020  
(D.S.D. Dec. 2, 1981)



# United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS  
INTERIOR BOARD OF INDIAN APPEALS  
4015 WILSON BOULEVARD  
ARLINGTON, VA 22203

## ESTATE OF WINNIE MOVES CAMP

IBIA 79-26

Decided November 15, 1979

Appeal from order by Administrative Law Judge Garry V. Fisher denying petition for rehearing.

Affirmed.

1. Indian Probate: Administrative Procedure: Applicability to Indian Probate

Opportunity to be represented and to be present and cross-examine witnesses is all the law requires as prerequisite of full administrative hearing.

2. Indian Probate: Evidence: Generally

The burden of proof as to testamentary incapacity in Indian Probate proceedings is on those contesting the will.

3. Indian Probate: Wills: Undue Influence: Generally

To invalidate a will on the ground of undue influence contestants must show such influence to have been exerted to the extent of destroying the free will of the testatrix or that the will of another was substituted for that of the testatrix, and this amounts to more than the opportunity or possibility that undue influence was brought to bear on the testatrix.

4. Indian Probate: Wills: Undue Influence: Failure to Establish, Generally

It is proper to deny a petition for rehearing in the matter of the approval of the

last will and testament of a deceased Indian where the record satisfactorily shows that the will was properly executed by one possessing the requisite testamentary capacity.

APPEARANCES: Appellants, Bernard Moves Camp, Annie Moves Camp, and James Moves Camp, pro sese, and through Ethel Merrival, Tribal Attorney; Mario Gonzalez, Esq., for appellee, Marion Moves Camp Yellow Elk.

# OPINION BY ADMINISTRATIVE JUDGE SABAGH

This is an appeal from an order denying petition for rehearing.

Winnie Moves Camp, Oglala Sioux Allottee No. 1999, died testate on November 10, 1977, possessed of certain trust property on the Pine Ridge Reservation.

Subsequent to hearings held at Pine Ridge, South Dakota, on June 20 and October 24, 1978, Judge Fisher issued an order and decree of distribution on February 9, 1979, wherein among other things, he found decedent's heirs at law to be--

Bernard Moves Camp	son	1/5
Annie Moves Camp Bad Cob	daughter	1/5
Mary Between Lodges, nee Moves Camp	daughter	1/5
James Moves Camp	son	1/5
Marion Moves Camp Yellow Elk	daughter	1/5

Judge Fisher further found decedent's last will and testament dated April 8, 1976, bequeathing all of her estate to her daughter, Marion Moves Camp Yellow Elk, to be valid, having been sufficiently supported by the evidence of record as to execution and testamentary capacity.

Petition for rehearing was filed on March 26, 1979, by the heirs at law named, supra, but not included in the devise, wherein they contended in substance that the will was invalid because of undue influence and mistake, in that the testatrix could not understand English, and that no interpreter was present at the time the will was drafted.

Judge Fisher denied the petition for rehearing on April 12, 1979. In his order of denial the Judge made the following findings:

By decision of February 9, 1979, the last will and testament of Winnie Moves Camp, bearing date of April 8, 1976, was approved and testatrix's trust properties were distributed to the sole beneficiary of the will, Marion Moves Camp Yellow Elk. A letter dated March 12, 1979, was received in

this office on March 26, 1979. The letter is signed by Bernard Moves Camp, Mary Moves Camp Between Lodges, Annie Moves Camp Bad Cob, and James Moves Camp, and although not in the prescribed form called for in 43 CFR 4.241, is herein treated as a petition for rehearing. The petitioners are those heirs of testatrix who did not receive any property pursuant to her will.

These same petitioners registered objections to the will at the hearing on June 20, 1978. They were represented by Ed Dyer, Legal Services, and Ethel Merrival appeared on their behalf. A second hearing was held on October 24, 1978, at which time the petitioners were represented by John Standafer, Legal Services. Therefore, throughout the proceedings petitioners had adequate representation and adequate opportunity to develop any issues relating to the will and any evidence in support thereof. At the hearing on October 24, 1978, Mr. Standafer, on behalf of the now petitioners, stated that because his witnesses either refused to testify or recanted there was no basis existent for challenging the validity of the will.

The letter of March 12, 1979, raised no issues which were not considered in the two hearings. A review of the transcript shows that both witnesses to the will, Frieda Brewer and Jo Ann Kihega testified as to the preparation of the will and merely because at this juncture petitioners feel the two witnesses were inexperienced in the drafting of wills there are no allegations in the letter of March 12, 1979, which could serve as a basis for rehearing. Petitioners are merely arguing with the results of the decision and have failed to provide adequate reason for a rehearing.

A timely appeal was filed with this Board. Notice of appeal submitted by the appellants includes the following--

This appeal is based upon the following grounds which when accumulated, add up to a deprivation of due process in violation of the fifth Amendment of the Constitution of the United States:

- 1) That on or about the 8th day of April, 1976, Freda (sic) Brewer and Joann (sic) Whalen, Bureau of Indian Affairs employees, were called out to the home of Marion Moves Camp to make out the will.

- 2) That the property was not described as it is listed at the Bureau of Indian Affairs Agency. A description of the entire estate should have been presented to Winnie at the time the will was made.

3) The will was not interpreted in the Indian language, and Winnie was not bilingual, having only attended school for the first or second grade years.

4) Bernard Moves Camp requested an interpreter, but none was made available.

5) That Bernard Moves Camp did visit with his mother subsequent to the will being made, and she stated to him that she wanted her estate to be equally divided among her children, in that she paid Marion room and board.

6) That Marion Moves Camp has made threatening and intimidating remarks to her brothers and sister, hoping to discourage them from filing this appeal.

7) When Winnie Moves Camp and her husband, Samuel were living, James and Bernard Moves Camp did build their home on the land that their father and mother had their home, where the entire family were raised, and with the knowledge and consent of their father and mother Samuel and Winnie Moves Camp.

It is the Board's conclusion that Judge Fisher's order and decree of distribution of February 9, 1979, must be affirmed.

[1] Opportunity to be represented and to be present and cross-examine witnesses is all the law requires as prerequisite of full administrative hearing. Freight Consolidators Co-Op., Inc. v. United States, 230 F. Supp. 692 (D.C. N.Y. 1964).

[2] The burden of proof as to testamentary incapacity in Indian Probate proceedings is on those contesting the will. Estate of William Cecil Robedeaux, 1 IBIA 106 (July 20, 1971), 78 I.D. 234.

[3] To invalidate a will on the ground of undue influence contestants must show such influence to have been exerted to the extent of destroying the free will of the testatrix or that the will of another was substituted for that of the testatrix, and this amounts to more than the opportunity or possibility that undue influence was brought to bear on the testatrix. Estate of John J. Akers, IA-D-18 (Feb. 26, 1968); 77 I.D. 268 (Sept. 9, 1970) affirmed as Akers v. Morton, 333 F. Supp. 184 (D. Mont. 1971).

The appellants were represented throughout the proceedings below by counsel. Moreover, they were afforded ample opportunity to adduce evidence in support of their contentions. This they failed to do. This is clearly supported by the statement of John Standafer, counsel for the appellants during the hearing held on October 24, 1976, at Tr. 15 and 16--

Mr Standafer: I'd like to make a statement at this time, Judge Fisher. Having consulted with all my clients prior to this hearing, we went over the nature of their testimony, and it seems to me that they have recanted. I have had one potential witness; the only potential witness who could testify as to the nature of any undue influence, who has refused to testify \* \* \* I am unable to go forward at this time and it is my belief that because we cannot bring out this testimony that we cannot contest this will.

Judge Fisher: The claim then is withdrawn.

[4] It is proper to deny a petition for rehearing in the matter of the approval of the last will and testament of a deceased Indian where the record satisfactorily shows that the will was properly executed by one possessing the requisite testamentary capacity. Estate of Jennie Baker Jimmie, IA-6 (November 21, 1949).

Testimony elicited at the hearings from Freida Brewer, and Jo Ann Kihega, scrivener and witnesses to the execution of the will by the decedent testatrix, and from Ione Bad Cob, decedent's granddaughter, clearly establishes that decedent possessed the requisite testamentary capacity, and understood and knew how to read and write English.

Based on the above, the Board holds that appellants have failed to satisfy their burden of proof in this case. We concur in Judge Fisher's findings and conclusion.

Pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, Judge Fisher's order and decree of distribution of February 9, 1979, is affirmed.

This decision is final for the Department.

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Mitchell J. Sabagh  
Administrative Judge

We concur:

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//original signed  
Franklin Arness  
Administrative Judge

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//original signed  
Wm. Philip Horton  
Chief Administrative Judge